

### **REMARKS**

Claims 1-9, 11, 12, and 15 have been amended to even more particularly describe the recited inventions and to incorporate language more conventional in U.S. patent practice. Claim 10 has been canceled, rendering its rejection moot. Claims 16 and 17 have been withdrawn. The specification has been amended to incorporate material previously incorporated by reference and identified by the Office as essential material to the preparation of the claimed compounds. The undersigned asserts that the material being inserted is the material previously incorporated by reference. No new matter has been added.

#### **Rejections under 35 U.S.C. § 112**

Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for referring to the specification for the recitation of the claimed subject matter. Claim 9 has been amended to include the structures of the compounds referenced in Tables 1 and 2 of the specification. The rejection is, therefore, considered moot.

Claims 11 and 12 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claim 12 stands further rejected under 35 U.S.C. § 101. In light of the present amendment, these rejections are considered moot.

Claims 1-15 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly non-enabling because the specification incorporates by reference what the Office has deemed essential material. In light of the present amendment, whereby said essential material has been expressly set forth, this rejection is considered moot.

Claims 1, 3-8, and 10-15 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly non-enabling. While the Applicants do not necessarily agree, the definition of R<sup>2</sup> has been amended to recite that R<sup>2</sup> is Ar<sup>2</sup>, Ar<sup>2</sup>-alkyl, or di(Ar<sup>2</sup>)alkyl. Reference to Het<sup>1</sup> and Het<sup>1</sup>-alkyl has been canceled. The Applicants reserve the right to prosecute the canceled subject matter in continuing or divisional applications.

**Rejection under 35 U.S.C. § 103**

Claims 1-15 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over WO 2004/033428 (WO 428) and the earlier priority document WO 2004/056772 (WO 772). The present application properly claims priority to PCT/EP02/14835, which has an international filing date of December 23, 2002. A certified copy of this document was submitted to the International Bureau on April 27, 2004. WO 428, which published on April 22, 2004, has an international filing date of October 7, 2003. WO 772, which published on July 8, 2004, has an international filing date of December 23, 2002. As a result, neither WO 428 nor WO 772 is prior art against the present application. The Applicants respectfully request that the rejection be withdrawn.

The Office states that U.S. Application No. 10/527,821 would form the basis for a rejection of claims 1-15 under 35 U.S.C. § 103(a). The Applicants believe that the 821 application only qualifies as prior art under 35 U.S.C. § 102(e) with respect to the present application. Both the 821 application and the present application were commonly owned by Janssen Pharmaceutica N.V. at the time the subject invention was made. The assignment for the present application is at Reel 019184 Frame 0380. The assignment for the 821 application is at Reel 016909 Frame 0910. Accordingly, the 821 application is not available as prior art in accordance with 35 U.S.C. § 103(c).

**Nonstatutory obviousness-type double patenting**

Claims 1-14 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly unpatentable over the claims of copending U.S. Application No. 10/527,821. Upon an indication of the allowability of the pending claims, the Applicants will consider whether the filing of a terminal disclaimer is appropriate.

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**PATENT**

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The Applicants assert that the foregoing represents a *bona fide* attempt to response to all issues raised in the January 10, 2008 Office Action. Aside from the unaddressed obviousness-type double patenting issue, the claims are considered to be in condition for allowance. Accordingly, an early indication to that effect is earnestly solicited.

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